IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

MONDAY, THE 24TH DECEMBER, 2007/3RD POUSHA, 1929

WP(Crl.).No. 227 of 2007(S)

PETITIONER:

YOOBI, D/O. LATE K.K.YOUSAF,
AGED 29 YEARS, RESIDING AT KARIPPAYIL MANZIL,
THAYIKKATTUKARA POST, ALUVA,
ERNAKULAM-683 106, KERALA.
(WORKING AS STENOGRAPHER GR-III, INTELLIGENCE
BUREAU, KADAVANTHARA).

BY ADV. SRI.T.M.RAMAN KARTHA
SMT.MANJULA NAIR

RESPONDENTS:
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1. DIRECTOR GENERAL OF POLICE,
KERALA POLICE HEAD QUARTERS, THIRUVANANTHAPURAM.

2. INSPECTOR GENERAL OF POLICE
(CENTRAL RANGE), ERNAKULAM.

3. SUPERINTENDENT OF POLICE,
ALUVA RURAL, ALUVA.

4. SUB INSPECTOR OF POLICE,
ALUVA.

5. CITY POLICE COMMISSIONER,
NEW DELHI.

6. STATION HOUSE OFFICER,
CHANAKYAPURI POLICE STATION, NEW DELHI.

7. SHABU S., AGED 33 YEARS,
S/O. SAIDUKANNU, POLICE CONSTABLE (PERSONAL
ORDERLY TO ACP), CHANAKYAPURI POLICE STATION,
NEW DELHI.
(RESIDING AT QUARTER NO.C-2/2, POLICE STATION
DEFENCE COLONY, NEW DELHI).

8. SHAJAHAN S.,
ADDITIONAL SUB INSPECTOR OF POLICE,
SPECIAL BRANCH, NEW DELHI.
(RESIDING AT QUARTER NO.C-2/2, POLICE STATION
DEFENCE COLONY, NEW DELHI).

R7 BY ADV. SRI.E.R.VENKATESWARAN
SRI.R.SREEHARI

R1 to R6 & R8GOVERNMENT PLEADER SRI C.M.KAMMAPPU

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 17/12/2007, THE COURT ON 24/12/2007 DELIVERED THE FOLLOWING:

APPENEDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE DISCHARGE SUMMARY DTD. 15/12/2005 ISSUED TO THE PETITIONER FROM DR.L.M.LOHIA HOSPITAL, NEW DELHI.

EXT.P2 TRUE COPY OF THE BIRTH CERTIFICATE DTD. 19/5/2006 ISSUED ON THE BIRTH OF SAYID FARHAN.

EXT.P3 TRUE COPY OF THE TALAQ NOTICE DTD.20/3/07 ISSUED TO THE PETITIONER BY THE 7TH RESPONDENT.

EXT.P4 TRUE COPY OF THE RESULT CHART ISSUED TO THE PETITIONER FROM THE MEDICAL TRUST HOSPITAL, COCHIN.

EXT.P5 TRUE COPY OF THE LETTER DTD. 15/5/2007 ISSUED TO THE DEPUTY DIRECTOR, SIB BY THE 7TH RESPONDENT.

EXT.P6 TRUE COPY OF THE MEMORANDUM DTD. 16/6/07 ISSUED BY THE ADNL. DY.DIRECTOR, SIB, TRIVANDRUM.

EXT.P7 TRUE COPY OF THE REPLY TO EXT.P6 GIVEN BY THE PETITIONER.

EXT.P8 TRUE COPY OF THE REPRESENTATION DTD. 3/2/05 FILED BY THE PETITIONER BEFORE THE ASST. DIRECTOR, IB HRQS. NEW DELHI.

EXT.P9 TRUE COPY OF THE ORDER OF THE JOINT DIRECTOR, INTELLIGENCE BUREAU DTD. 23/3/06.

EXT.P10 TRUE COPY OF THE MEMORANDUM ISSUED TO THE PETITIONER BY THE ASST. DIRECTOR, INTELLIGENCE BUREAU, NEW DELHI ON 5/6/06.

EXT.P11 TRUE COPY OF THE REPRESENTATION DTD. 20/6/06 SUBMITTED BY THE PETITIONER TO THE DY. DIRECTOR, SIB, TRIVANDRUM.

EXT.P12 TRUE COPY OF THE MEMORANDUM DTD. 27/6/06 ISSUED BY THE ADDL. DY. DIRECTOR, SIB, TRIVANDUM.

EXT.P13 TRUE COPY OF THE LETTER DTD. 9/4/07 ISSUED TO THE PETITIONER'S MOTHER FROM THAIKKATTUKARA MUSLIM JAMA ATH COMMITTEE.

EXT.P14 TRUE COPY OF THE LETTER DTD. 9/4/07 ISSUED TO THE PETITIONER'S MOTHER FROM THAIKKATTUKARA MUSLIM JAMA ATH COMMITTEE.

EXT.P15 TRUE COPY OF THE ORDER OF THE GUARDIAN JUDGE, NEW DELHI IN GS.NO.79./07 DTD. 12/10/07.

RESPONDENTS' EXTS:

EXT.R7A PHOTOCOPY OF DISCHARGE SUMMARY CERTIFICATE DTD. 27/3/07 ISSUED BY MEDICAL TRUST HOSPITAL, ERNAKULAM.

EXT.R7B PHOTOCOPY OF LETTER DTD. 24/4/07 SENT TO THE GL. SECRETARY, THAIKKATTUKARA MUSLIM JAMA ATH, ALUVA.

EXT.R7C PHOTOCOPY OF CERTIFICATE OF DIVORCE OF THE PETITIONER AND THE 7TH RESPONDENT.

EXT.R7D SOUND CLIPS.

P.R.RAMAN & V.K.MOHANAN, JJ.

W.P.(Crl)NO.227 OF 2007

Dated this the 24th day of December, 2007

JUDGMENT

Raman, J.

Petitioner and the 7th respondent were husband and wife. Their marriage was solemnized as per the customary rites on 5/9/2002 at Aluva. Subsequently, a child was born to them in that wedlock on 5/12/2005. Both of them were residing at New Delhi. It is the case of the petitioner that the 7th respondent started making allegations to the effect that the petitioner is maintaining illicit relationship with her distant relatives in Kerala. Subsequently, the petitioner and her baby were brought back to her parental home for post natal care. She had also got a transfer to the Office of the Intelligence Bureau at Ernakulam in June, 2006. It was then the 7th respondent started making allegations to the effect that the petitioner was maintaining illicit relationship with her distant relatives in Kerala. In March, 2007 the 7th respondent issued a notice of Talaq to the petitioner through the Muslim Jama Ath Committee dissolving his marriage with the petitioner alleging that she had sexual relationship with another person

of her locality. Ext.P3 is the copy of the notice of Talaq so issued. Petitioner denies the allegation contained in Ext.P3. She also admits the fact that she was admitted in the Medical Trust Hospital on 22/3/2007 and was discharged from there on 26/3/2007. While the petitioner was in the hospital the 7th respondent visited her and told her that he was not pressing the Talaq notice and subsequently also he visited the petitioner in her parental home frequently and even resided four days together with the petitioner and the child. Thus the petitioner's mother had intimated the Jama Ath Committee regarding the resumption of cohabitation by the parties even after Ext.P3 notice. The 7th respondent wanted the petitioner to apply for re-transfer to New Delhi and it was not acceptable to her. Thereafter, the 7th respondent met the Jama Ath Committee and obtained a certificate of divorce on the basis of Ext.P3 notice. Subsequently on 24/8/2007 the 7th respondent came to the parental home of the petitioner to see the child as usual. When the petitioner's mother was away on that day, the petitioner alone was in the house to take care of the child and the 7th respondent took the child along with him and left the home without intimating anything as to where he was taking the child. The child was not returned subsequently. It is alleged that the petitioner

contacted the elder brother of the 7th respondent from whom she came to know that the 7th respondent had taken the child to New Delhi. Though the petitioner wanted to file a police complaint against the 7th respondent, it was desisted, thinking that the 7th respondent will bring back the child to her. But finding that there is no positive response forthcoming and in spite of the fact that she tried to contact the 7th respondent over phone, such attempt did not succeed. This writ petition is filed for a direction to the respondents to produce the minor child, Sayid Farhan aged 1 year and 10 months, before this Court forthwith and to hand over custody of the child to the petitioner.

2. Pursuant to the notice issued, a counter affidavit was filed by the 7th respondent. In the counter affidavit it is averred that the petitioner and the 7th respondent were married on 5/9/2002 and pursuant thereto an agreement of marriage was registered on 18/7/2002. Both the petitioner and the 7th respondent are Central Government employees. Petitioner came down to Delhi and they were leading happy married life and a child was born to them at New Delhi. But the relationship between the petitioner and the 7th respondent started declining, since the petitioner had regular contacts with her friend in Kerala. Various conversations

between the petitioner and the lover of the petitioner (Ashiq) were admitted by the petitioner herself. Her lover came down to Cochin which fact came to the knowledge of the 7th respondent only subsequently when the petitioner came down to Cochin in March 2006. Petitioner herself admitted the relationship with the said Ashiq and hence the 7th respondent had no other alternative than to initiate Talaq and it was in those circumstances that Ext.P3 notice was issued. On receipt of the said notice the petitioner attempted to commit suicide and she was admitted in the Hospital on 20/3/2007. It was also alleged that an attempt was made to give poison to the child. Subsequently, she was discharged on 27/3/2007. Photocopy of the discharge certificate is produced as Ext.R7(a). The 7th respondent initiated counselling the petitioner for re-approachment and she was brought down to her house at Aluva. Thereafter, the Secretary of the Jama Ath Committee approached the petitioner, but the petitioner was not interested in having a proper relationship. Hence, Ext.R7(b) was issued expressing his desire to proceed with the Talaq. It was on receipt of the same that the petitioner phoned up to the 7th respondent saying that she cannot accept the divorce and she will commit suicide along with the child. On 17/5/2007 after obtaining the Talaq certificate which was

intimated to the office of the petitioner, he came down to the petitioner's house and said that he would like to take the child, which was objected to by her mother saying that the child may not be taken for the moment and the Secretary of the Jama Ath Committee promised to give the child after three months. Accordingly, the 7th respondent came down to the petitioner's house on 24/8/2007 and taken the child and there was no objection at all. The allegation that he forcefully taken the child is denied. The further allegation contained in the writ petition that the 7th respondent switched off the mobile phone, when she attempted to contact him is also denied. The 7th respondent has no intention to continue the relationship with the petitioner, as it will affect the future career of the child. It is prayed that this writ petition may be dismissed.

3. Subsequently, a reply affidavit was filed producing Exts.P15. The 7th respondent filed an additional counter affidavit also. In the view we are taking, it is not felt necessary to consider such details of the allegations and counter allegations, as we do not propose to enter a finding on merits.

4. Pursuant to the notice issued, the parties have appeared before us and our effort to bring the parties for reunion however did not succeed.

We had given the petitioner-mother temporary custody of the child by our order dated 19/11/2007 and allowed the parties for interaction with each other with a view that both the parties may reconciliate in the larger interest and welfare of the child and adjourned the case to 4/12/2007. On 4/12/2007 however the child was given to the 7th respondent-father, since he expressed his desire to celebrate the birthday of the child on 5/12/2007. Thereafter, he brought back the child and the child was given to the custody of the petitioner-mother. On 7/12/2007 the interim order granting custody of the child to the petitioner was extended by one week so as to enable the parties to approach the Family Court in the meantime and posted the case on 14/12/2007.

5. It is submitted by the learned counsel for the 7th respondent that he has already filed Guardian and Wards O.P. No. 1660/2007 before the Family Court, Ernakulam and the case is posted on 22/1/2008 for appearance of the parties. Considering the age of the child as also the fact that the child was taken from Ernakulam where the petitioner and the child were residing in her maternal house, we thought it proper to put back the child to the custody of the petitioner, leaving open the right of the parties to approach the Family Court, which is the appropriate Forum

to consider, based on materials on record, whether the child should be given to the custody of the petitioner or to the 7th respondent considering the welfare of the child. Now that the 7th respondent had already approached the Family Court as already noticed above, we extend the interim custody of the child to be with the mother till such time the Family Court may pass appropriate orders interim or otherwise. The Family Court shall consider all aspects of the matter independently untrammelled by the observations contained in this judgment. We make it clear that we have not considered the matter in greater length nor assessed the truth or otherwise of the allegations and counter allegations made in the writ proceedings, as we thought that the jurisdiction in habeas corpus petition shall not be enlarged and enter a finding on the merits of the case, especially when the parties have approached an alternative Forum, where such matter could be dealt with in greater length. At the risk of repetition we may say that We have only considered as to who should be given the interim custody of the child for the time being, having due regard to the fact that the child was with the mother before the child was taken away by the 7th respondent, until the matter is considered land orders passed by the Family Court.

Both parties shall appear before the Family Court on the next hearing date.

Writ Petition is disposed of as above.

P.R.RAMAN,
Judge.

V.K.MOHANAN,
Judge.

kcv.